TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1904

No. 887.

W. O. JOHNSON, PLAINTIFF IN ERROR,

vs.

SOUTHERN PACIFIC COMPANY.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED JULY 19, 1904.

(19013.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 362.

W. O. JOHNSON, PLAINTIFF IN ERROR,

vs.

SOUTHERN PACIFIC COMPANY.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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55 *Assignment of errors.*

And on the eighth day of June, A. D. 1903, an assignment of errors was filed in the clerk's office of said circuit court of appeals in words and figures following, to wit:

United States circuit court of appeals for the eighth circuit.

W. O. JOHNSON, PLAINTIFF,
vs.
SOUTHERN PACIFIC COMPANY,
defendant.
} No. 1722. Assignment of error.

On a judgment of the United States circuit court of appeals for
56 the eighth circuit, in the May term, 1902, of said court, wherein the said W. O. Johnson was plaintiff and the said Southern Pacific Company was defendant, the said plaintiff assigns the following as error of the said court in the decisions of said cause:

That the said court erred in the construction and application of the act of Congress of the United States of March 2nd, A. D. 1893, in relation to couplings on cars used by common carriers in interstate commerce, entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes." And that the said judgment should have been in favor of plaintiff in error instead of in favor of defendant in error.

That the said court erred in rendering judgment against this plaintiff in error.

The above errors are respectfully submitted. Dated this 13th day of March, 1903.

W. L. MAGINNIS,
Attorney for Plaintiff.

(Endorsed:) No. 1722. W. O. Johnson, plaintiff in error, vs. Southern Pacific Company. Assignment of errors. Filed Jun. 8, 1903. John D. Jordan, clerk.

Petition for writ of error.

And on the eighth day of June, A. D. 1903, there was filed in the clerk's office of said circuit court of appeals a petition for writ of error in said cause in words and figures following, to-wit:

In the Supreme Court of the United States.

W. O. JOHNSON, PLAINTIFF,
vs.
SOUTHERN PACIFIC COMPANY,
defendant.
} Petition for writ of error.

Now comes the plaintiff, W. O. Johnson, and says that he is a resident of the State of Utah and county of Weber; that on the 28th day of

August, A. D. 1902, a judgment was rendered by the United States circuit court of appeals for the eighth circuit in favor of the defendant,
57 Southern Pacific Company (which is a corporation organized and existing under and by virtue of the laws of the State of Kentucky, and operating a railroad in the State of Utah and county of Weber) and against this plaintiff, by which this plaintiff was aggrieved, in that the said judgment was erroneous and contrary to law and greatly to the prejudice of this plaintiff, as more fully appears herein and in a copy of the record in said action and in an assignment of error filed in said cause in said United States circuit court of appeals for the eighth circuit, all of which are hereto attached.

That the said cause above entitled was commenced in the district court of the first judicial district of the State of Utah, in and for Box Elder County, and removed therefrom by the defendant above named into the circuit court of the United States for the district of Utah and thence by appeal to the United States circuit court of appeals for the eighth circuit.

That the said cause arose out of a personal injury received by the plaintiff while attempting to couple two cars together, and was brought under the act of Congress of the United States of March 2nd, 1893, relative to couplings on cars used in interstate commerce, and that the construction of the said act is in question, and that the said United States circuit court of appeals erred in rendering judgment in favor of said defendant.

The amount involved exceeds the sum of $2,000.00.

Wherefore plaintiff prays that a writ of error may issue to the United States circuit court of appeals for the eighth circuit for the correction of the error complained of, and that a duly authenticated transcript of the record, proceedings, and papers herein may be sent to the said Supreme Court of the United States.

Dated this 4th day of June, 1903.

W. O. JOHNSON.

Allowed.

H. B. BROWN,

Associate Justice Supreme Court of the United States.

June 4, 1903.

(Endorsed:) No. 1722. W. O. Johnson, plaintiff in error, vs. Southern Pacific Company. Petition for writ of error. Filed Jun. 8, 1903. John D. Jordan, clerk.

58 *Bond on writ of error.*

And on the eighth day of June, A. D. 1903, there was filed in the clerk's office of said circuit court of appeals, in said cause, a bond on writ of error, in words and figures following, to wit:

Know all men by these presents, that we, W. O. Johnson, as principal, and The United States Fidelity and Guaranty Company, as sureties, are held and firmly bound unto Southern Pacific Company in the full and just sum of three hundred 00/000 dollars, to be paid to the said Southern Pacific Company's certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our

heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 21st day of February in the year of our Lord one thousand nine hundred and .

Whereas lately at a term of the United States circuit court of appeals for the eighth circuit, in a suit depending in said court between W. O. Johnson, plaintiff in error, and Southern Pacific Company, defendant in error, a judgment was rendered against the said W. O. Johnson, plaintiff in error, and the said W. O. Johnson, plaintiff in error, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Southern Pacific Company citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within days from the date thereof:

Now, the condition of the above obligation is such that if the said W. O. Johnson, plaintiff in error, shall prosecute said appeal to effect, and answer all damages and costs if he fail to make plea good, then the above obligation to be void; else to remain in full force and virtue.

W. O. JOHNSON. [SEAL.]
THE UNITED STATES FIDELITY AND GUARANTY COMPANY. [SEAL.]
By J. M. FORRISTALL,
H. H. HENDERSON,
Attys. in Fact.

Signed, sealed, and delivered in presence of—
CHAS. STONT.
Approved by—
BROWN,
Associate Justice of the Supreme Court of the United States.

59 (Endorsed:) No. 1722. W. O. Johnson, plaintiff in error, vs. Southern Pacific Company. Bond on writ of error. Filed Jun. 8, 1903. John D. Jordan, clerk.

Writ of error.

And on the eighth day of June, A. D. 1903, a writ of error was filed in the clerk's office of said circuit court of appeals, in said cause, the original of which, with my return thereto, is hereto attached and herewith returned.

60 UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges of the United States Circuit Court of Appeals for the Eighth Circuit, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said United States circuit court of appeals before you, or some of you, between W. O. Johnson, plaintiff in error, and the Southern Pacific Company, defendant in error, a manifest error hath happened, to the great damage of the said W. O. Johnson, plaintiff in error, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the

parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the United States, the 5th day of June, in the year of our Lord one thousand nine hundred and three.

[SEAL.] JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
H. B. BROWN,
Associate Justice of the Supreme Court of the United States.

61 *Return to writ.*

UNITED STATES OF AMERICA,
Eighth Circuit, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereto subscribe my name, and affix the seal of the United States circuit court of appeals for the eighth circuit, at office in the city of St. Louis, Missouri, this eighteenth day of June, A. D. 1903.

[SEAL.] JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Indorsed:) No. 1722. W. O. Johnson, plaintiff in error, vs. Southern Pacific Company. Writ of error. Filed Jun' 8, 1903. John D. Jordan, clerk.

62 *Clerk's certificate.*

United States circuit court of appeals, eighth circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing sixty-two pages contain full, true, and complete copies of all the pleadings, proceedings, and record entries, including the opinion of said circuit court of appeals, in a certain cause wherein W. O. Johnson was plaintiff in error and the Southern Pacific Company was defendant in error, No. 1722, May term, 1902, as full, true, and complete as the same remain on file and of record in my office.

I do further certify that the mandate in said cause was issued to the circuit court of the United States for the district of Utah on the first day of November, A. D. 1902.

I do further certify that the original writ of error, with my return endorsed thereon, is hereto attached and herewith returned.

In testimony whereof I hereunto subscribe my name and affix the seal of said circuit court of appeals, at office in the city of St. Louis, Missouri, in the eighth circuit, this eighteenth day of June, A. D. 1903.

[SEAL.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

63 UNITED STATES OF AMERICA, ss:

To Southern Pacific Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the United States circuit court of appeals for the eighth circuit, wherein W. O. Johnson is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Henry B. Brown, Associate Justice of the Supreme Court of the United States, this 5th day of June, in the year of our Lord one thousand nine hundred and three.

H. B. BROWN,
Associate Justice of the Supreme Court of the United States.

64 On this 19th day of June, in the year of our Lord one thousand nine hundred and three, personally appeared L. H. Smyth before me, the subscriber, clerk of the U. S. dist. court for the dist. of Utah, and makes oath that he delivered a true copy of the within citation to Thomas Marshall, attorney and designated agent for the State of Utah of the Southern Pacific Company.

Sworn to and subscribed the 19 day of June, A. D. 1903.

[SEAL.]

JERROLD R. LITCHER,
Clerk U. S. dist. court dist. Utah.

(Indorsed:) No. 1722. W. O. Johnson, plaintiff in error, vs. Southern Pacific Company.

Citation.

I hereby certify and return that I served the within citation on the therein-named defendant, Southern Pacific Company, by delivering a true copy thereof to Thomas Marshall, its attorney and designated agent for the State of Utah, on whom processes may be served, at Salt Lake City, in the district of Utah, on the 19th day of June, 1903.

B. B. HEYWOOD,
U. S. Marshal.

By L. H. SMYTH,
Chief Deputy.

65 In the Supreme Court of the United States, October term, 1903.

W. O. JOHNSON, PETITIONER,
vs.
THE SOUTHERN PACIFIC COMPANY. } No. 279.

On writ of certiorari to the U. S. circuit court of appeals for the eighth circuit.

W. O. JOHNSON, PLAINTIFF IN ERROR,
vs.
THE SOUTHERN PACIFIC COMPANY. } No. 362.

In error to the U. S. circuit court of appeals for the eighth circuit.

Stipulation as to printing of records.

Come now the parties to the above-entitled causes, by their
66 counsel, and stipulate that the transcript of the record in case No. 279, W. O. Johnson, petitioner, vs. The Southern Pacific Company, shall be printed; that the record in case No. 362, W. O. Johnson, plaintiff in error, vs. The Southern Pacific Company, shall not be printed, except the portions thereof constituting the writ of error and other proceedings subsequent thereto; that both cases shall be submitted to and considered by the court upon such printed record and this stipulation; and that this stipulation shall in no way prejudice the rights of the defendant in error in No. 362 or affect its right to object to
67 the jurisdiction of the court in the case on the writ of error.

(Signed) L. A. SHAVER,
Counsel for Petitioner in No. 279 and Plaintiff in Error in No. 362.

(Signed) MAXWELL EVARTS,
Counsel for Respondent in No. 279 and Defendant in Error in No. 362.

(Indorsed:) Supreme Court of the U. S., October term, 1903. W. O. Johnson, petitioner, vs. Southern Pacific Company, No. 279. W. O. Johnson, plaintiff in error, vs. The Southern Pacific Company, No. 362. Stipulation as to printing records. Maxwell Evarts, counsel for respondent in No. 279 and defendant in error in No. 362, 120 Broadway, Borough of Manhattan, New York City. File Nos. 18929 &
68 19013. Supreme Court U. S., October term, 1903. Term Nos., 279 and 362. W. O. Johnson, petitioner, vs. Southern Pacific Co. and W. O. Johnson, plff. in error, vs. Southern Pacific Co. Stipulation as to printing records. Filed November 18, 1903.

69 (Indorsement on cover:) File No. 19013. U. S. circuit court of appeals, 8th circuit. Term No., 362. W. O. Johnson, plaintiff in error, vs. Southern Pacific Company. Filed July 16th, 1903.